

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LARRY ROBINSON,

Plaintiff,

v.

KANDY BURNHAM and LORI BLUE,

Defendants.

CASE No. 1:23-CV-431

HON. ROBERT J. JONKER

**ORDER APPROVING AND ADOPTING
REPORTS AND RECOMMENDATIONS**

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action (ECF No. 50) and Defendants' Objection to it. (ECF Nos. 51, 52). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the

Report and Recommendation itself; and Defendants' objections. After its review, the Court finds the Magistrate Judge's Report and Recommendation is factually sound and legally correct.

The Magistrate Judge recommends denying Defendants' motion for summary judgment (ECF No. 34) which seeks summary judgment on the basis of exhaustion. In their objections, Defendants primarily reiterate and expand upon arguments presented in their original brief. Their objections fail to deal in a meaningful way with the Magistrate Judge's analysis. The Magistrate Judge carefully and thoroughly considered the record, the parties' arguments, and the governing law. The Magistrate Judge properly analyzed the law regarding exhaustion. Even if Defendants are right that there are good reasons for a policy requiring a direct request to the facility's warden for a plaintiff to avail him or herself of the grievance policy set out at P.D. 03.02.130 ¶N, that is *not* the policy in effect, as the Magistrate Judge accurately concluded. Nothing in Defendants' Objections changes the fundamental analysis.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF Nos. 50) is **APPROVED AND ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment on the Basis of Exhaustion (ECF No. 34) is **DENIED**.

Dated: November 25, 2024

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE